



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Secure Services Technology, Inc.

File: B-238059

Date: April 25, 1990

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David R. S. Kennedy, Esq., for Ricoh Corporation, an interested party.

Althea C. Kearney, U.S. Customs Service, Department of the Treasury, for the agency.

Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Contracting agency's selection of the significantly higher priced awardee, based on the technical superiority of the awardee's facsimile machines, lacks a reasonable basis where the determination of technical superiority is based primarily on the awardee's higher technical point score for its operating manual, which did not address paper loading, while protester's operating manual was unreasonably downgraded for allegedly not clearly describing paper loading, and on the protester's failure to provide unrequested software with its proposal.

2. Contracting agency failed to conduct meaningful or equal discussions with the protester in a negotiated procurement for facsimile machines where the agency failed to identify its specific technical concerns regarding the protester's operating manual and provide the protester the opportunity to offer a revised manual in response to the agency's concerns, yet did provide the awardee with this opportunity.

C48382/14124Z

DECISION

Secure Services Technology, Inc. (SSTI), protests the award of a contract to Ricoh Corporation under request for proposals (RFP) No. CS-89-028, issued by the U.S. Customs Service, Department of the Treasury, for a fixed-price contract for the purchase, installation and maintenance of TEMPEST and non-TEMPEST approved^{1/} facsimile machines.^{2/} SSTI contends that Customs did not conduct meaningful discussions with it and improperly evaluated its proposal.

We sustain the protest.

The RFP listed specific technical requirements that offered equipment must meet to be considered technically acceptable and required offerors to provide their TEMPEST and non-TEMPEST approved machines for testing. It stated that award would be made to the responsible offeror whose offer, conforming to the solicitation, was most advantageous to the government, price and other factors considered. Offerors were informed that those proposals, offering equipment meeting the specified technical requirements, would be evaluated in accordance with the following weighted evaluation criteria:^{3/}

^{1/} TEMPEST approval is an assurance that the equipment does not radiate radio frequency emissions that could be intercepted and decoded.

^{2/} The quantities were estimated to be 15 TEMPEST and 15 non-TEMPEST facsimile machines for the base year and 5 TEMPEST and 5 non-TEMPEST facsimile machines for each of the 4 option years.

^{3/} While Customs contends that the technical evaluation factors were worth a maximum of 80 points, we note that the maximum technical evaluation score an offeror could achieve is 72 points.

| <u>Technical Criteria</u> | <u>Points</u> |
|--|---------------|
| 1. User Friendly | |
| a. Is user manual clear and easy to understand? | 10 |
| b. How easy is it for the user to change data rates, operate and re-load paper? | 10 |
| 2. Data Speed | 11 |
| 3. Maintenance | 13 |
| 4. Field Delivery | 13 |
| 5. Dimensions | 5 |
| 6. Weight | 5 |
| 7. Special Device | 5 |
| A computer program to allow the facsimile machine to communicate directly into a computer. | |
| Price | 20 |

All technical criteria, except "user friendly" and "special device," listed completely objective standards as to how points would be awarded (e.g., various offered response times for maintenance and specific dimensions and weights). Offerors were informed that price would be evaluated by adding the total price for all options to the total price for the base requirement and to the price for 12 months maintenance. Evaluation points for price were awarded based upon a stated formula with the low offeror receiving the maximum points and other offerors receiving proportionally less points.

Eight proposals were received in response to the RFP, and Customs determined that six proposals, including SSTI's and Ricoh's, were technically acceptable and within the competitive range. Customs tested the offered machines of each of the competitive range offerors, conducted written discussions and requested best and final offers (BAFOs). During the first round of discussions, SSTI was asked only one technical question, a question about the RS-232 button

light.^{4/} After evaluation of the BAFOs, Customs determined that all offerors but Ricoh had failed to address the special device evaluation criterion but that this deficiency had not been pointed out during discussions. Accordingly, Customs conducted further written discussions on this point and requested a second round of BAFOs.

SSTI's and Ricoh's second BAFOs were evaluated as follows:

| | <u>Ricoh</u> | <u>SSTI</u> |
|----------------|-----------------------|-----------------------|
| Manual | 8 | 4 |
| Operation | 8 | 8 |
| Data Speed | 11 | 11 |
| Maintenance | 13 | 13 |
| Field Delivery | 13 | 13 |
| Size | 5 | 3 |
| Weight | 3 | 2 |
| Special Device | 5 | 3 |
| Price | <u>14</u> (\$424,155) | <u>19</u> (\$312,100) |
| TOTAL | 80 | 76 |

Customs determined that Ricoh's offer was most advantageous to the government since it received the highest combined technical/price score. The agency concluded that the score indicated Ricoh's offered equipment was technically superior to the other offerors' equipment, and expressly found Ricoh's technical advantage outweighed SSTI's price advantage. The agency also stated that Ricoh's equipment was superior in size and weight and had the capability of selecting either synchronous or asynchronous modes of operation, and that Ricoh could provide, at additional cost, a software program which would enable its facsimile machine to communicate with personal computers. Award was made to Ricoh on November 27, 1989. After a debriefing, SSTI protested to our Office on December 15.^{5/}

^{4/} The button activates a port on the TEMPEST approved machines to allow messages to be sent. According to SSTI's manual, its TEMPEST approved machine will not transmit facsimile messages unless this button is activated.

^{5/} While SSTI's protest was not filed within 10 calendar days of award, Customs has informed us that the agency has not placed any orders against Ricoh's requirements contract.

We find the record does not contain an adequate basis for the award selection decision. As discussed below, the record indicates the point scores awarded Ricoh and SSTI, which formed the basis for award selection, reflect unequal treatment of the offerors that was exacerbated by Customs's failure to hold meaningful discussions with SSTI.

Ricoh's superior technical score is primarily the result of higher scores for Ricoh's operating manual and special device software. First, while Ricoh was awarded 8 points for the "user friendly" operating manual subcriterion, SSTI received only 4 points. The only specific comments made by the evaluators on this subcriterion were that SSTI's manual did not provide clear instructions on how to load paper into the machine, and did not clearly explain what the "RS-232 button" did to change the operation of the machine. From our review of the offerors' operating manuals, however, these evaluator concerns are questionable. SSTI's manual does identify the function of the "RS-232" button as activating a port on the TEMPEST approved machine to allow the TEMPEST secure transmission of documents. Moreover, SSTI's paper loading instructions also seem clear. That is, SSTI's manual guides the reader through the paper loading process with step-by-step narrative and pictorial instructions that we find are understandable to nontechnical individuals. Ricoh's manual, on the other hand, does not appear to address paper loading at all. Given Customs's concern regarding paper loading, we question how Customs could downgrade SSTI's operating manual for lack of clarity in this area and not address Ricoh's failure to discuss paper loading at all. See J.M. Cashman, Inc., B-233773, Apr. 14, 1989, 89-1 CPD ¶ 380.

Customs's scoring of this factor is all the more unreasonable in light of the agency's failure to point out its concerns during discussions with SSTI. Discussions with competitive range offerors are required to be meaningful; to satisfy that standard, agencies generally must advise offerors of deficiencies in their proposals to afford them an opportunity to revise their proposals to fully satisfy the government's requirements. Federal Acquisition Regulation § 15.610(c)(2) (FAC 84-16); Techniarts Eng'g, B-234434, June 7, 1989, 89-1 CPD ¶ 531. In this regard, discussions should be as specific as practical considerations will permit. Id.; see also Data Preparation, Inc., B-233569, Mar. 24, 1989, 89-1 CPD ¶ 300.

Although SSTI was awarded only 4 of the maximum 10 points for its operating manual, the only technical question Customs asked during the pertinent discussions was:

"The Customs Service is concerned about the RS-232 button light. Explain how an operator would know what mode the facsimile is operating in if this light burns out?"

Obviously, this one technical question did not provide SSTI with notice that Customs considered SSTI's operating manual to be deficient in describing paper loading or the operation of the RS-232 button, or that the operating manual was not considered "user friendly."

Although Customs now argues in its report that because SSTI's operating manual was not user friendly no correction could have been made short of total substitution, the record does not support Customs's contention that SSTI's manual was considered generally not "user friendly" by the evaluators. To the contrary, there is no indication that the evaluators found SSTI's manual to be unclear or hard to understand, and we see no reason why the evaluators' specific concerns regarding the manual could not have been addressed during discussions.

In this regard, we note that even though Ricoh's initial score was higher than SSTI's for the "user friendly manual" criterion, Customs expressed specific concerns to Ricoh during discussions about unclear portions of its manual. This led to an increase in Ricoh's score for the operating manual criterion, when Ricoh, in response to the discussions, offered in its BAFO to provide a customized operating manual under the contract. Clearly, SSTI was given no similar opportunity to offer something that would alleviate Customs's user friendly concerns about its manual, even though this was the principal evaluated deficiency of its proposal.

Second, we question Customs's downgrading of SSTI's offer under the special device evaluation criterion. The RFP statement of work did not require the contractor to provide the special device software as a part of the contract price. In this regard, Ricoh's offer indicated that its software was available as an option for separate purchase. When Customs determined that no offeror, other than Ricoh, had

met the special device criterion, it advised SSTI:

"Please provide information that addresses Technical Evaluation Factor No. 7 Special Device in the RFP. Your response should include whether you proposed equipment has a computer program that allows a facsimile to communicate directly into a computer."

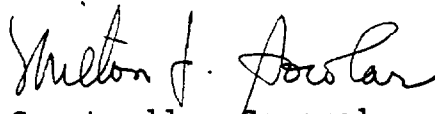
In its second BAFO, SSTI identified and described a specific software package which would enable its machines to communicate with personal computers. Customs, however, only awarded SSTI 3 of 5 points under this factor because SSTI had not provided a copy of its software with its BAFO. In contrast, Ricoh received full credit (5 points), since it provided the software with its proposal.

However, SSTI provided in its BAFO details of its proposed software, and Customs has not indicated that there is anything insufficient about SSTI's software description; it simply downgraded SSTI for not providing the software itself. Neither the RFP nor Customs indicated or implied that providing software for testing was a prerequisite for receiving full credit. Under the circumstances, we cannot conclude that the scoring differential under this criterion represents any technical superiority.

We find unsupported Customs's view that Ricoh's rating should be higher than SSTI's for these two criteria. Moreover, while Customs describes Ricoh's machines as having the ability to operate in either synchronous or asynchronous modes, SSTI's proposal indicates its offered equipment also has this ability. Thus, Customs's determination that Ricoh had a significant technical advantage over SSTI that would justify award to Ricoh, despite its significantly higher price, has not been justified on the record before us. To the contrary, we find that but for Custom's unsupported and unreasonable evaluation, SSTI's technical score would have been very close to that received by Ricoh and its price was more than 26 percent less than Ricoh's price. Under the evaluation scheme established by the agency, SSTI's proposal therefore should have been found more advantageous to the government than Ricoh's.

We recommend that Customs terminate Ricoh's contract for the convenience of the government and make award to SSTI. SSTI is entitled to recover its costs of filing and pursuing the protest, including its reasonable attorneys' fees. 4 C.F.R. § 21.6(d) (1989). SSTI should submit its claim for its protest costs directly to Customs. 4 C.F.R. § 21.6(e).

The protest is sustained.


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